

### REMARKS

Entry of the foregoing, reexamination and further and favorable reconsideration of the subject application in light of the following remarks, pursuant to and consistent with 37 C.F.R. § 1.112, are respectfully requested.

The Office Action Summary correctly indicates that claims 32, 38-43 and 49-60 are pending in the application. Claims 53, 55-57, 59 and 60 are withdrawn from consideration. Claims 32, 38-43, 49-52, 54 and 58 are under consideration and stand rejected.

Claims 32, 38-43, 49-52, and 57-60 have been amended. Claims 61 and 62 have been added.

Claims 32, 39, 43 and 50 have been amended to recite that the inhibitory RNA reduces or abolishes the expression of a gene as would be understood by one skilled in the art from the specification, for example as pointed out at page 2, lines 26-30, as well as at pages 11 and 29.

Claims 32, 39, 43 and 50 have also been amended to recite that the inhibitory RNA comprises a sense RNA or an antisense RNA, said sense or antisense RNA comprising a nucleotide sequence of at least 50 nucleotides having 95% to 100% sequence identity to the nucleotide sequence of said gene in said plant cell or the complement thereof. New claims 61 and 62 recite that the length is at least 100 nucleotides. Support for these amendments can be found at least at page 9, lines 2-5 and pages 21-22.

The dependencies of claims 42, 49, 51, 52 and 57-60 are also amended. Support for these amendments may be found throughout the specification at least as previously described.

No prohibited new matter has been introduced by way of the above amendments. Applicants reserve the right to file a continuation or divisional application on subject matter canceled by way of this Amendment.

**Rejections under 35 U.S.C. § 112, second paragraph**

Claim 42 was objected to as dependent upon non-elected claims. The dependency of claim 42 has been amended to eliminate its dependency on non-elected claims. Withdrawal of the objection is respectfully requested.

**Rejections under 35 U.S.C. § 112, second paragraph**

Claims 32, 38-43, 49-52, 54 and 58 stand rejected under 35 U.S.C. § 112 as allegedly being indefinite for various asserted reasons. The rejections are respectfully traversed at least for the reasons discussed below.

The Examiner asserts that it is unclear what is meant by chimeric nucleic acid. Applicants respectfully submit that one skilled in the art would understand the metes and bounds of the term from reading the specification taken with the general knowledge in the field. However, without acceding to the alleged basis of the rejection, claims 32, 39, 43 and 50 have been amended to delete recitation of the unnecessary parenthetical phrase including the term "chimeric nucleic acid."

The Examiner also asserts that the phrase "inhibitory RNA" renders the claim indefinite. The Examiner alleges that the structure of the inhibitory RNA and what is to be inhibited are not indicated. Again, Applicants respectfully submit that one skilled in the art would understand the metes and bounds of the term from reading the specification taken with the general knowledge in the field. However, without acceding to the alleged basis of the rejection, claims 32, 39, 43 and 50 have been amended to recite that the inhibitory RNA reduces or abolishes the expression of a gene as would be understood by one skilled in the art from the specification, for example as pointed out at page 2, lines 26-30, as well as at pages

11 and 29. Claims 32, 39, 43 and 50 have also been amended to recite that the inhibitory RNA comprises a sense RNA or an antisense RNA, said sense or antisense RNA comprising a nucleotide sequence of at least 50 nucleotides having 95% to 100% sequence identity to the nucleotide sequence of said gene in said plant cell or the complement thereof as explained at least at page 9, lines 2-5 and pages 21-22 of the specification.

Thus, while Applicants continue to disagree with the rejection as asserted, Applicants submit that the rejection cannot reasonably be applied to the claims as amended. Withdrawal of the rejection is respectfully requested.

**Rejections under 35 U.S.C. § 112, first paragraph**

Claims 32, 38, 42, 43, 49, 54 and 58 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to satisfy the enablement requirement. The rejection is respectfully traversed.

The Examiner has alleged that the specification does not enable the claimed methods and kits when the vector comprises deletions of the coat protein-coding region of the satellite virus. However, the specification does in fact describe and enable the use of a satellite tobacco mosaic virus (STMV) in which all or part of the coat protein has been deleted, for example on page 16 and in Example 4. Further, it may be noted that the coat protein is encoded by nucleotides 162 to 641 of SEQ ID NO:4 (GenBank Accession No. M25782), whereas nucleotides 1 to 197 are used in a particularly preferred construct described for example at page 20 of the specification.

Moreover, the Examiner's reliance on Gossele et al. is misplaced as the purportedly non-working examples described therein not relevant to the presently claimed invention, because *inter alia*, the STMV vectors used by Gossele et al. did not contain an origin of

assembly of tobacco mosaic virus as in the presently claimed vectors. Thus, the cited evidence fails to support the rejection.

However, without acceding to the alleged basis of the rejection, the limitation "wherein part or all of the coat protein encoding gene of satellite tobacco mosaic virus has been deleted" has been struck from claims 32 and 43 so that the rejection cannot be reasonably asserted against the claims as amended. Accordingly, withdrawal of the rejection is respectfully requested.

#### **Restriction Requirement**

The restriction requirement set forth in the Office Action dated January 13, 2004 was maintained and made final notwithstanding Applicants traversal thereof. As a result, claims 53, 55-57 and 59-60 were withdrawn from consideration.

In the present Office Action, all of the claims under consideration have been acknowledged as free from the prior art, the rejection of claims 32, 34, 38, 43, 45 and 49 under 35 U.S.C. § 103(a) having been withdrawn.

Each of withdrawn claims is dependent on one or more linking claims that have been indicated by the Office as free of the prior art and are believed to be allowable in view of the foregoing. The procedure in such a case is set forth in M.P.E.P. § 809 as follows:

The linking claims must be examined with the invention elected, and should any linking claim be allowed, the restriction requirement must be withdrawn. Any claim(s) directed to the nonelected invention(s), previously withdrawn from consideration, which depends from or includes all the limitations of the allowable linking claim must be rejoined and will be fully examined for patentability.

All the claims that have been withdrawn incorporate all the limitations of the linking claims in accordance with 37 C.F.R. § 1.141. Applicants respectfully request that upon a

finding of allowability of the linking claims, the restriction requirement be withdrawn and the dependent claims be fully examined as required by M.P.E.P. § 809.

### CONCLUSION

In view of the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order. Such action is earnestly solicited.

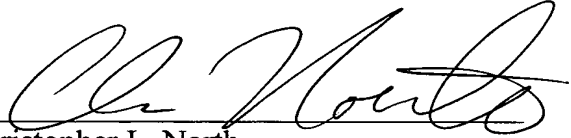
In the event that there are any questions relating to this application, it would be appreciated if the Examiner would telephone the undersigned concerning such questions so that prosecution of this application may be expedited.

The Director is hereby authorized to charge any appropriate fees that may be required by this paper, and to credit any overpayment, to Deposit Account No. 02-4800.

Respectfully submitted,

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Date: June 30, 2005

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